



August 2, 2000

Mr. Wyman Hopkins
Administrative Sergeant
City Of Rosenberg
2120 Fourth Street
Rosenberg, Texas 77471

OR2000-2922

Dear Mr. Hopkins:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137638.

The Rosenberg Police Department (the "department") received a request for information relating to a specified case number. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

You specifically raise section 552.108(a)(2) of the Act, which provides in relevant part that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if ... it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must sufficiently explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) protects law enforcement records that pertain to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. In this instance, you inform us that "[t]he respective case . . . investigation has been concluded, but has not been adjudicated and therefore has not resulted in a conviction or deferred adjudication against any person." However, the requested police report itself reflects that both the case status and the disposition are "open" and that the case was to be forwarded to the district attorney's office for review. Thus, you have not demonstrated that the case to which the

report pertains concluded in a final outcome other than a conviction or a deferred adjudication, and the report itself contradicts your assertion that such was the outcome of the case. Therefore, except as specified below, the requested police report is not excepted from public disclosure under section 552.108 and must be released to the requestor.¹

The report contains social security number information that may be confidential under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if that information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.*² See Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number information contained in the submitted police report was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the information in question was obtained or is maintained pursuant to such a law and is therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. In this particular instance, the requestor has a special right of access to his own social security number information under section 552.023 of the Government Code, and that information may not be withheld from him under section 552.101.³ Otherwise, prior to releasing any of the social security number information that we have labeled, the department should ensure that the information was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

The report also contains motor vehicle record information whose disclosure is governed by section 552.130 of the Government Code. Section 552.130 provides in relevant part:

¹In the future, the department should inform this office more accurately, in raising section 552.108, of the specific status or final outcome of the case to which the requested information pertains. See Gov't Code § 552.301(e)(1)(A) (requiring submission of written comments stating the reasons why the exceptions raised by the governmental body would allow the requested information to be withheld).

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

³See Gov't Code § 552.023(a) (providing that a person or a person's authorized representative has a special right of access, beyond that of the general public, to information held by a governmental body that relates to that person and that is protected from public disclosure by laws intended to protect that person's privacy interests); see also Open Records Decision No. 481 at 5 (1987) (stating that where an individual asks a governmental body to release information concerning only that individual, no common law privacy interest arises, and the individual is entitled to that information if the governmental body can claim no other basis for denying access to it). We emphasize, however, that if the department receives another request for information that relates to the requestor, and the person that requests the information does not have a special right of access to it under section 552.023 of the Government Code, the department should resubmit the information to this office and request another ruling.

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). Again, the requestor has a special right of access under section 552.023 to motor vehicle record information relating to himself. We have labeled the other motor vehicle record information that the department must withhold in accordance with section 552.130.

In summary, the submitted police report is not excepted from public disclosure under section 552.108 of the Government Code. However, it contains social security number information that may be confidential under section 552.101 of the Government Code and motor vehicle record information that must be withheld in accordance with section 552.130. The balance of the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

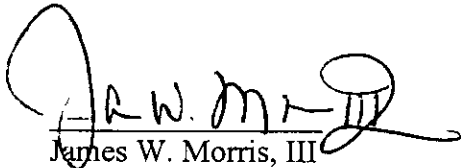
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 137638

Encl. Submitted documents

cc: Mr. Kerneth Garza
P O Box 417
Boling, Texas 77420
(w/o enclosures)